State Of Hawaii DEPARTMENT OF LAND AND NATURAL RESOURCES

Division of State Parks Honolulu, Hawaii

November 16, 2007

Board of Land and Natural Resources State of Hawaii Honolulu, Hawaii

SUBJECT:

Withdrawal from Governor's Executive Order No. 2876; Set Aside to the

County of Hawaii for Park and Recreational Purposes; Authorize

Cancellation of Various Encumbrances; Memorandum of Understanding with the County of Hawaii; Construction and Management Right of Entry to the County of Hawaii, Portions of the Land of Keahuolu and Lanihau-Nui, North Kona, Hawaii, Tax Map Keys: 3rd/7-5-05:07, 72, 73, 74, 79,

82, 83

CONTROLLING AGENCY OF GEO NO. 2876:

Department of Land and Natural Resources, Division of State Parks

APPLICANT FOR SET ASIDE:

County of Hawaii 25 Aupuni Street Hilo, HI 96720

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes (HRS), as amended

LOCATION:

Portions of the land of Keahuolu and Lanihau-Nui, North Kona, Hawaii, being portions of R.P. 7456, Land Commission Award 8559-B, Apana 11 to William C. Lunalilo; and portions of R.P. 6851, Land Commission Award 8452, Apana 12 to A. Keohokalole, being Parcels 1 and 2 of the land acquired by the Territory of Hawaii from the Trustees of the Liliuokalani Trust, et al by FINAL ORDER OF CONDEMNATION (Law No. 2525) dated November 15, 1948 and recorded in Liber 2183, Pages 459-475 (Land Office Deed 8617); being also Parcel 7 of the land acquired by the Territory of Hawaii from the Trustees of the Liliuokalani Trust and Manuel Gomes by FINAL ORDER OF

CONDEMNATION (Law No. 2883) dated June 2, 1954 and recorded in Liber 2831, Pages 237-241 (Land Office Deed 12130); together with all appurtenant structures and improvements thereon except where reserved, being the OLD KONA AIRPORT STATE RECREATION AREA set aside by Governor's Executive Order No. 2876 to the Department of Land and Natural Resources, Division of State Parks, further identified as Tax Map Keys: 3rd/7-5-05:07, 72, 73, 74, 79, 82 and 83, retaining an area not to exceed 5.000 acres for the Kona Sub-Unit baseyard together with Easement A, CSF No. 22183 and Easement 1, CSF No. 21,858.

AREA:

98.000 acres, more or less, same subject to review by the Survey Division, Department of Accounting and General Services. (The Division of State Parks shall retain an area not to exceed 5.000 acres, which shall include the old hangar building, mobile office site and surrounding area for its baseyard, together with Easement A, CSF No. 22183 (2.712 acres) and Easement 1, CSF No. 21858 (29, 487 square feet) for access and utility purposes.) (See Exhibit A).

ZONING:

State LUC: Urban/Conservation

County of Hawaii CZO: Industrial (ML-20)

LAND TITLE STATUS:

Sub-section 5(a) land of the Hawaii Admission Act. Parcels 1 and 2, having been acquired by the Territory of Hawaii from the Trustees of the Liliuokalani Trust, et al by FINAL ORDER OF CONDEMNATION (Law No. 2525) dated November 15, 1948 and recorded in Liber 2183, Pages 459-475 (Land Office Deed 8617).

Parcel 7, having been acquired by the Territory of Hawaii from the Trustees of the Liliuokalani Trust and Manuel Gomes by FINAL ORDER OF CONDEMNATION (Law No. 2883) dated June 2, 1954 and recorded in Liber 2831, Pages 237-241 (Land Office Deed 12130).

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES		NO	Χ.

CURRENT USE STATUS:

- Governor's Executive Order No. 2876 to the Department of Land and Natural Resources, Division of State Parks for park and recreational purposes;
- General Lease No. S-5156 to the County of Hawaii covering 34.848 acres for park and recreational purposes;
- General Lease No. S-5271 to the County of Hawaii, Department of Parks and Recreation, covering 5.342 acres, to be used solely for the park and recreational purposes of a canoe storage facility;
- Sublease between the County of Hawaii and the Kai'opua Canoe Club covering the area encumbered under General Lease No. S-5271;
- Right-of-entry granted to the County of Hawaii to operate a temporary recreational rink for inline roller hockey under Agenda Item E-2, as amended, BLNR meeting of April 25, 1997;
- Right-of-entry granted to Kai E Hitu Canoe Club under Agenda Item F-1-d, as amended, BLNR meeting of July 11, 1985;
- Grant of Easement to the Department of Accounting and General Services (Survey Division) for a six foot wide, 1,010 meter long electronic, distance-measuring (EDM) baseline, approval granted under Agenda Item F-4, BLNR meeting of May 25, 1984;
- Temporary Non-Exclusive Access and Utilities Easement (Easement A) being a portion of the Kuakini Highway, granted to the County of Hawaii, under Agenda Item F-3, as amended, BLNR meeting of May 27, 1994, further identified as Grant of Non-Exclusive Easement S-5386; and
- Unrecorded use agreement with the Department of Defense, State Civil Defense, for the placement of a pole and warning siren to notify the public of an impending disaster. Approval signed and dated May 24, 1994.

PURPOSE OF SET ASIDE:

Park and recreational purposes.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

This action before the Board is a transfer of management jurisdiction and does not constitute a new or additional use of State lands or use of State funds, and therefore, is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. If required, the County of Hawaii shall be responsible for compliance with Chapter 343, HRS, as amended, for all future developments on the subject site.

APPLICANT REQUIREMENTS:

The County of Hawaii shall be required to assist and facilitate the subdivision of the Old Kona Airport site and shall assist in obtaining all other permits, approvals, etc., required to complete the set-aside. Further, the County of Hawaii shall assist, including payment of cost, etc., in the survey of the Old Kona Airport site.

REMARKS:

With the completion of Keahole Airport (nka Kona International Airport), the Old Kona Airport (aka Kailua Airport) ceased operations in 1970. Discussions began immediately on the development potential of the Old Kona Airport site (OKA site). Numerous development models that included various combinations of residential, commercial and hotel/resort uses were discussed. Also, being proposed for the OKA site was a multipurpose recreational complex.

By July 30, 1970, then Governor John A. Burns had decided that the OKA site would be developed as a park and authorized the Department of Land and Natural Resources (DLNR) to begin the process of developing a long-range plan. In the interim, the County of Hawaii (COH) was granted a right-of-entry to maintain and operate the beach area for recreational use. During this interim period, beach pavilions and a restroom facility was built by the COH. The COH also planned for and constructed a baseball and football field on approximately six acres of the non-beach area.

By Resolution dated March 24, 1971, the Council of the COH initiated their first request for the conveyance of "the abandoned Kailua-Kona Airport and its surrounding property under State control to the County of Hawaii for the purpose of the development of a recreational complex."

Management of the OKA site was done jointly by the COH and the DLNR. The OKA site hosted a variety of events including motorcycle and drag races, the Bi-Centennial Celebration, the Carol Kai Bed Race, the Jerry Lewis Labor Day Telethon, radio controlled model aircraft, swap meets and various carnivals and other fundraising events.

In 1976, the Board approved two major submittals and an amendment that set the direction for the OKA site.

First, at its meeting of February 27, 1976, under Agenda Item F-5, as amended, the Board authorized a lease of approximately 14.8 acres of the OKA site to the COH (General Lease S-4565 for a term of 10 years to expire on December 7, 1987). The Board delegated to the Chairperson, the authority to develop mutually agreeable lease terms with the COH. Further, the submittal extended the right-of-entry to the increased area to be leased.

Second, at its meeting of April 9, 1976, under Agenda Item F-13, the Board approved and recommended to the Governor of Hawaii, the issuance of an executive order cancelling Executive Order No. 1310 for airport use. Further, the Board approved and recommended to the Governor of Hawaii, the issuance of an executive order setting aside the OKA site to the Department of Land and Natural Resources, Division of State Parks, for park and recreational purposes. The area of the set-aside would be subject to the earlier approval of a lease of 14.8 acres ± to the COH.

Lastly, pending formal documentation of the set-aside, granted the COH a right-of-entry to the OKA site to honor prior commitments of community activities.

Further, at its meeting of August 27, 1976, the Board under Agenda Item F-5, amended its previous action of April 9, 1976, Agenda Item F-13, by including the cancellation of Executive Order No. 1684 and revising the area to be set aside to the Department of Land and Natural Resources, Division of State Parks, for the Old Kona Airport State Recreation Area. The Board also authorized the Chairperson to take all necessary actions to remove an aviation easement previously required for airport use.

Executive Order No. 2876, setting aside the OKA site to the Department of Land and Natural Resources, Division of State Parks, was executed by then Governor George R. Ariyoshi on October 17, 1977.

In the years that followed, plans were written and drawn, construction and renovations occurred and various Board actions affected the OKA site. A chronology of major events is as follows:

- December 1977, Draft Interpretive Plan for the State park at Old Kona Airport was prepared by the Environmental Impact Study Corporation;
- July 1978, Revised Environmental Impact Statement for the State park at Old Kona Airport was prepared by the Environmental Impact Study Corporation and accepted by then Land Board Chairperson William Y. Thompson;

- September 1978, Phase I contract specifications and plans for the Events Pavilion and the beach pavilions were completed;
- June 1979, Development Plan for the State park at Old Kona Airport was prepared by Environmental Impact Study Corporation;
- July 1979, the Planning Commission of the County of Hawaii granted a Special Management Area (SMA) use permit to begin development of the OKA site. The approval for the Phase I development included the construction of the Events Pavilion and related parking, beach pavilions and a beach restroom, together with appropriate landscaping around the improvements;
- July 1980, Archaeological Reconnaissance of Old Kona Airport State Park was prepared by Agnes Estioko-Griffin and George W. Lovelace;
- October 4, 1983, dedication ceremony and blessing for the Events Pavilion was held;
- Direct Grant of Easement to the Department of Accounting and General Services (Survey Division) for an electronic, distance-measuring (EDM) baseline. Approval granted under Agenda Item F-4, BLNR meeting of May 25, 1984;
- Right-of-entry granted to Kai E Hitu Canoe Club under Agenda Item F-1-d, as amended, BLNR meeting of July 11, 1985;
- General Lease No. S-5156 to the County of Hawaii, covering 34.848 acres for park and recreational purposes was authorized by the BLNR at its meeting of February 28, 1986 under Agenda Item F-3, as amended;
- Revocable Permit No. S-6396 to the County of Hawaii for a police substation/motor vehicle licensing office was authorized under Agenda Item F-1-f, BLNR meeting of March 25, 1986. Note: Revocable Permit No. S-6396 was cancelled at the County's request on May 19, 2004 after the motor vehicle licensing office was re-located;
- At its meeting of February 14, 1992, under Agenda Item F-2, the BLNR approved of and recommended to the Governor of Hawaii, the withdrawal of .71 acres ± from the operations of Governor's Executive Order No. 2876 and the subsequent set-aside to the County of Hawaii for a wastewater pump station site;

- General Lease No. S-5271 to the County of Hawaii covering 5.342 acres ± for park and recreational purposes of a canoe storage facility was authorized by the BLNR at its meeting of April 10, 1992 under Agenda Item E-2, as amended;
- December 1993, Draft Project Development Report, Old Kona Airport State Recreation Area, was prepared by Akinaka and Associates, Ltd.;
- Temporary, non-exclusive easement for access and utilities purposes (portion of Kuakini Highway) was granted to the County of Hawaii by the BLNR at its meeting of May 27, 1994 under Agenda Item F-3, as amended. The temporary easement, identified as Grant of Non-Exclusive Easement S-5386, shall expire on May 26, 2009;
- March 1995, Construction completed on the Makae'o Walking/Jogging Path;
- 1995/1996, Community planning effort began in 1995 on the Phase I Landscaping Plan for the Makae'o Walking/Jogging Path. Tree planting and other landscape projects were completed during 1996 by various sub-contractors and community volunteers.
- April 2006, Final Design for the individual wastewater systems for the Events Pavilion, north beach restrooms and south beach restrooms were completed by Engineering Solutions, Inc.;
- April 2006, Final inspection completed for the barrier removal project at the Old Kona Airport State Recreation Area;

As a result of a discussion between the Honorable Harry Kim, Mayor of the County of Hawaii, and then Chairperson Peter T. Young, the Mayor expressed an interest in taking over the OKA site and developing it into a regional park for West Hawaii. The Mayor listed four (4) conditions for acceptance of the OKA site. They are:

- 1. Structural repairs to the Events Pavilion must be made;
- 2. ADA renovations in accordance with the consent decree shall be completed;
- 3. Compliance with EPA's large capacity cesspool requirements shall be met [Note: It was determined that the wastewater systems at the OKA site did not fall under the large capacity cesspool statute. However, since the

systems were under-performing, the DLNR intended to upgrade the systems. The Department will, in lieu of construction, enter into a Memorandum of Understanding and transmit an avoidance cost to the County of Hawaii.]; and

4. A request for \$50,000 from the State to hold a community charette to master plan the Old Kona Airport State Recreation Area.

The Department responded to Mayor Kim as follows:

- 1. No structural repairs were required for the Events Pavilion. (Note: The Department replaced the roll-up gates with boxed aluminum fence-line structures with appropriately spaced doors.);
- 2. ADA renovations for the Events Pavilion, the north beach restrooms and pavilion, portions of the Maka'eo Walking/Jogging Path and parking areas servicing the various areas have been completed and certified;
- 3. The wastewater systems for the Events Pavilion and the beach restrooms did not fall under the large capacity cesspool consent decree with the EPA. However, since the systems were under performing, the DLNR designed and was prepared to construct aerobic wastewater systems (aerobic WWS). Note: The County of Hawaii (COH) was consulted prior to any work being done on the aerobic WWS. The COH had some concerns about accepting an aerobic WWS. After some discussions, it was agreed that the COH would connect the facilities to the County sewer system and the DLNR would transmit the avoidance cost of the aerobic WWS project to the COH.
- 4. A series of community based planning sessions were facilitated by Friends for Fitness in 2001. A survey of the community's wants, needs, etc., was compiled into a plan called <u>Kailua Park Maka'eo</u>, <u>Old Airport</u>. Note: A copy of the plan was given to the COH.

Staff continues their on-going discussions with the COH to insure a smooth transition. The COH has agreed to honor all Events Pavilion and beach pavilion permits. The appropriate pavilion fees and deposits will be transferred to the COH based on the start date of the construction and management right-of-entry.

Staff will continue to work with the COH as they develop their plans for a regional park. We will share knowledge and expertise on the history, archaeology, location of cultural

and burial sites, operations, etc., of the OKA site and will assist, to the extent practical, in their planning and development efforts.

No vehicles, equipment or employees will be transferred to the COH in this approval.

A draft of this submittal was e-mailed to the Mayor's office, the Department of Parks and Recreation and the Office of the Corporation Counsel.

Also, the submittal was both e-mailed and mailed to the Office of Hawaiian Affairs. No comments have been received.

RECOMMENDATIONS:

That the Board:

- 1. Approve of and recommend to the Governor of Hawaii, the issuance of an executive order withdrawing approximately 98.000 acres more or less, of the Old Kona Airport State Recreation Area (OKA site) from the operations of Executive Order No. 2876, which is under the control and management of the Department of Land and Natural Resources, Division of State Parks, subject to:
 - A. The Division of State Parks shall retain an area not to exceed 5.00 acres, which shall include the old hangar building, mobile office site and surrounding area for its Kona Sub-Unit baseyard together with Easement A, CSF No. 22183 and Easement 1, CSF No. 21,858;
 - B. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - C. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- 2. Find the OKA site to be an economic unit for the intended purpose;

- 3. Approve of and recommend to the Governor of Hawaii, the issuance of an executive order setting aside the OKA site (excluding the area to be retained by the Division of State Parks) to be under the control and management of the County of Hawaii, for park and recreational purposes under the terms and conditions above mentioned, which are by this reference incorporated herein and subject to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. That the County of Hawaii shall be responsible for any compliance requirements under Chapter 6E Historic Preservation, Chapter 343 Environmental Impact Statements and Chapter 183C, Conservation District, Hawaii Revised Statutes, as amended;
 - D. That the seaward boundary of the executive order shall be at the lowest wash of the waves at the lowest tide;
 - E. Grant of Easement to the Department of Accounting and General Services (Survey Division) for a six foot wide, 1,010 meter long electronic, distance-measuring (EDM) baseline;
 - F. Unrecorded use agreement with the Department of Defense, State Civil Defense for the placement of a pole and warning siren;
 - G. The County of Hawaii shall honor all Events Pavilion, beach pavilion and special use permits that were issued by the Division of State Parks;
 - H. Unrestricted access to the Kona Sub-Unit baseyard site shall be reserved for the Department of Land and Natural Resources, its employees, consultants, contractors and/or persons acting for or on its behalf to conduct the State's official business;
 - I. Additional encumbrances, rights-of-ways and/or easements, known and/or unknown, recorded and/or unrecorded;

- J. Review and approval by the Department of the Attorney General; and
- K. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- 4. Authorize the cancellation of the following:
 - A. General Lease No. S-5156 to the County of Hawaii covering 34.848 acres for park and recreational purposes and General Lease No. S-5271 to the County of Hawaii, Department of Parks and Recreation, covering 5.342 acres for canoe storage facility upon execution of the Governor's executive order;
 - B. Sublease of General Lease No. S-5271 to Kai Opua Canoe Club upon execution of the Governor's executive order to the County of Hawaii with the understanding that a new lease between Kai Opua Canoe Club and the County of Hawaii shall be entered into upon said execution of the Governor's executive order:
 - C. Right-of-entry to the County of Hawaii to operate a temporary recreational rink for inline roller hockey upon commencement of the construction and management right-of-entry to the County of Hawaii;
 - D. Right-of-entry to Kai E Hitu Canoe Club upon commencement of the construction and management right-of-entry to the County of Hawaii; and
 - E. Special Use Permit No. H62148 to the County of Hawaii for construction of the sewer line project upon commencement of the construction and management right-of-entry to the County of Hawaii.
- 5. Enter into a Memorandum of Understanding with the County of Hawaii relating to the upgrading of the sewage disposal systems for the Events Pavilion, the north beach restrooms and the south beach restrooms. The County of Hawaii shall accept all responsibilities to upgrade the sewage disposal systems for the three above-mentioned facilities. The DLNR shall transmit to the County of Hawaii the avoidance cost of five hundred thousand dollars (\$500,000) to upgrade the three facilities with aerobic wastewater systems subject to:

- A. Review to approval as to form and legality by the Department of the Attorney General; and
- B. Such other terms and conditions as may be prescribed by the Chairperson.
- 6. Grant a construction and management right-of-entry to the County of Hawaii (COH), its consultants, contractors and/or persons acting for or on its behalf, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The right-of-entry shall commence on a mutually agreeable date, but not later that January 1, 2008 and shall remain in effect until the Governor's Executive Order is executed:
 - B. The COH shall honor all Events Pavilion, beach pavilion and special use permits that were issued by the Division of State Parks;
 - C. Unrestricted access to the Kona Sub-Unit baseyard site shall be reserved for the Department of Land and Natural Resources, its employees, consultants, contractors and/or persons acting for or on its behalf to conduct the State's official business;
 - D. COH shall insure that, its consultants, contractors and/or persons acting for or on its behalf, indemnify, defend and hold the State of Hawaii, Department of Land and Natural Resources, harmless from and against any loss, liability, claim or demand for property damage, personal injury, and death arising out of any act or omission of the COH, its consultants, contractors and/or persons acting for or on its behalf, under this approval or relating to or connected with the granting of this approval;
 - E. COH shall insure that, its consultants, contractors and/or persons acting for or on its behalf, procure, at their own expense, and maintain during the entire period of this right-of-entry, from an insurance company or companies licensed to do business in the State of Hawaii, a policy or policies of comprehensive public liability insurance, in an amount acceptable to the Department (\$500,000 per incident/\$1,000,000 aggregate) insuring the State of Hawaii against all claims for personal injury, death, and property damage; that said policy shall cover the entire right-of-entry area, including all improvements and grounds and all roadways or sidewalks on or

adjacent to the said right-of-entry area in the control or use of the COH, its consultants, contractors and/or persons acting for or on its behalf:

F. COH, its consultant, contractors and/or persons acting for or on its behalf, shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. The COH, its consultants, contractors, and/or persons acting for or on behalf, shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the right-of-entry area any such materials except to use in the ordinary course of business of the COH, its consultants, contractors, and/or persons acting for or on its behalf, and then only after written notice is given to the State of Hawaii, Department of Land and Natural Resources, of the identity of such materials and upon the State's consent which may be withheld at the State's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by the COH, its consultants, contractors and/or persons acting for or on its behalf, then the COH. its consultants, contractors and/or persons acting for or on its behalf, shall be responsible for the reasonable cost thereof. In addition, the COH shall or on its behalf, shall be responsible for the reasonable cost thereof. In addition, the COH shall insure that, its consultants, contractors, and/or persons acting for or on its behalf, execute affidavits, representations and the like from time to time at the State's request concerning the best knowledge and belief of the COH, its consultants, contractors and/or persons acting for or on its behalf, regarding the presence of hazardous materials on the right-ofentry area placed or released by the COH, its consultants, contractors and/or persons acting for or on its behalf.

The COH shall insure that, its consultants, contractors and/or persons acting for or on its behalf, agree to indemnify, defend, and hold the State of Hawaii, Department of Land and Natural Resources harmless, from any damages and claims resulting from the release of hazardous materials on the right-of-entry area occurring while the COH, its consultants, contractors and/or persons acting for or on its behalf, is in possession, or elsewhere if caused by the COH, its consultants, contractors and/or persons acting for or on its behalf.

These covenants shall survive the expiration or earlier termination of the right-of-entry.

For purposes of this right-of-entry, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted;

- G. The COH, its consultants, contractors and/or persons acting for or on its behalf shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments relative to the rights granted herein;
- H. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered, the COH, its consultants, contractors and/or persons acting for or on its behalf shall stop work and contact the State Historic Preservation Division at (808) 692-8015 immediately;
- I. COH shall be responsible for any compliance requirements under Chapter 6E, Chapter 343 and Chapter 183C, Hawaii Revised Statutes, as amended and all applicable Hawaii Administrative Rules prior to the commencement of any construction work;
- J. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,

Daniel S. Quinn

State Parks Administrator

APPROVED FOR SUBMITTAL:

for LAURA H. THIELEN, Chairperson

